

1 Juanita R. Brooks, SBN 75934, brooks@fr.com  
2 Todd G. Miller, SBN 163200, miller@fr.com  
3 Fish & Richardson P.C.  
4 12390 El Camino Real  
5 San Diego, CA 92130  
6 Telephone: (858) 678-5070  
7 Facsimile: (858) 678-5099

5 Mathias W. Samuel, pro hac vice, samuel@fr.com  
6 Michael J. Florey, pro hac vice, florey @fr.com  
7 Thomas S. McClenahan, SBN 203204, mcclenahan@fr.com  
8 Michael J. Pape, pro hac vice, pape@fr.com  
9 Fish & Richardson P.C.  
10 60 South Sixth Street, Suite 3300  
11 Minneapolis, MN 55402  
12 Telephone: (612) 335-5070  
13 Facsimile: (612) 288-9696

10 Limin Zheng, SBN 226875, zheng@fr.com  
11 Fish & Richardson P.C.  
12 500 Arguello Street, Suite 500  
13 Redwood City, CA 94063  
14 Telephone: (650) 839-5070  
15 Facsimile: (650) 839-5071

16 Attorneys for Plaintiffs/Counterclaim Defendants  
17 Fresenius Medical Care Holdings, Inc. and Fresenius USA, Inc.

18  
19 UNITED STATES DISTRICT COURT  
20  
21 NORTHERN DISTRICT OF CALIFORNIA  
22  
23 (OAKLAND DIVISION)

24 FRESENIUS MEDICAL CARE HOLDINGS,  
25 INC., a New York corporation; and FRESENIUS  
USA, INC., a Massachusetts corporation,

Case No. C 03-01431 PJH (EMC)

26 Plaintiffs and Counter-  
27 Defendants,

**FRESENIUS' STATEMENT OF RECENT  
DECISIONS & REQUEST TO SUBMIT  
ADDITIONAL MATERIALS;  
[PROPOSED] ORDER**

28 v.  
29  
30 BAXTER INTERNATIONAL, INC., a  
31 Delaware corporation; and BAXTER  
32 HEALTHCARE CORPORATION, a  
33 Delaware corporation,

34 Defendants and Counterclaimants.

Defendants Baxter International, Inc. and Baxter Healthcare Corporation's (collectively, "Baxter") Motion For Decision On Limited Remand Issues [Dkt. 1048] and Plaintiffs Fresenius Medical Care Holdings, Inc. and Fresenius USA, Inc.'s (collectively "Fresenius") Motion For New Trial To Determine Damages For U.S. Patent No. 5,247,434 [Dkt. 1042] and Fresenius's Motion To Stay Remand Proceedings [Dkt. 1044] are currently pending before the Court.

The United States Court of Appeals for the Federal Circuit has since last February decided several cases that directly impact the issues presented by these pending motions. Pursuant to Civil Local Rule 7-3(d), Fresenius respectfully submits the following relevant Federal Circuit opinions published after the date the opposition to Baxter’s motion or replies in support of Fresenius’ motions were filed:

- *Uniloc USA, Inc. v. Microsoft Corporation*, -- F.3d --, 2011 WL 9738 (Fed. Cir. Jan. 4, 2011) (copy attached as Attachment A)
  - *Wordtech Systems, Inc. v. Integrated Network Solutions, Inc.*, 609 F.3d 1308 (Fed. Cir. 2010) (copy attached as Attachment B)
  - *ResQNet.com, Inc. v. Lansa, Inc.*, 594 F.3d 860 (Fed. Cir. 2010) (copy attached as Attachment C)

Further pursuant to Civil Local Rule 7-3(d), Fresenius respectfully requests permission from the Court to submit a two-page letter brief to state the relevancy of these decisions, including an identification of relevant portions of the trial record and the briefs that pertain to the pending motions and impacted by the recent decisions.

Dated: January 24, 2011

FISH & RICHARDSON P.C.

By: /s/ Michael E. Florey  
Michael E. Florey

Attorneys for Plaintiffs/Counterclaim  
Defendants  
FRESENIUS MEDICAL CARE HOLDINGS,  
INC. AND FRESENIUS USA, INC.

## [PROPOSED] ORDER

Good cause having been shown, the Court grants Fresenius' request to submit a letter brief, limited to no more than two pages, within seven (7) days of the issuance of this Order, to state the relevancy of the recent Federal Circuit opinions *Uniloc USA, Inc. v. Microsoft Corporation*, -- F.3d --, 2011 WL 9738 (Fed. Cir. Jan. 4, 2011); *Wordtech Systems, Inc. v. Integrated Network Solutions, Inc.*, 609 F.3d 1308 (Fed. Cir. 2010); and *ResQNet.com, Inc. v. Lansa, Inc.*, 594 F.3d 860 (Fed. Cir. 2010), to the pending motions (Dkt. Nos. 1042; 1044; 1048).

Baxter may thereafter submit a response letter brief, limited to no more than two pages, within seven (7) days of Fresenius' filing of its letter brief.

IT IS SO ORDERED.

Dated: January 26 , 2011

